

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	
Capability to All Americans in a Reasonable)	CC Docket No. 98-146
And Timely Fashion, and Possible Steps)	
To Accelerate Such Deployment)	
Pursuant to Section 706 of the)	
Telecommunications Act of 1996)	

**REPLY COMMENTS OF
THE PROGRESS & FREEDOM FOUNDATION**

The Progress & Freedom Foundation (“PFF” or “Foundation”) hereby submits these reply comments in response to the Notice of Inquiry in this proceeding.¹ In its initial comments filed on September 24, 2001, PFF explained at some length why the Commission urgently needs to take a different approach — a clearly deregulatory one — in fulfilling its responsibilities under Section 706 to encourage the deployment of broadband services on a reasonable and timely basis.

Without denying that progress has been made since passage of the 1996 Telecommunications Act, we said: “The Commission has an opportunity to take a more dynamic approach, one which takes into account the current state of technological development, investment trends, the current sluggish state of the economy and the

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 01-223, CC Docket No. 98-146, August 10, 2001

financial distress in the high-tech sector, the new applications waiting in the wings if more bandwidth becomes available on a more ubiquitous basis, and the national security interest in having in place a more secure and reliable communications infrastructure.”² We especially urged the Commission to recognize that “broadband is evolving in unpredictable ways, with constantly changing business models and new value propositions.”³ In light of these dynamic conditions, we argued the marketplace, rather than the Commission, will best be able to make the necessary business and technological adjustments. Finally, and importantly, we explained in some detail that the Commission possesses the authority to implement a uniform deregulatory regime for broadband that eliminates the current market-distorting regulations that stifle new investment.

In this brief reply, we offer two comments based on events that have taken place since our initial filing. First, it is now clear that America’s economy is in recession. Layoffs in September were the highest in nine years, and many expect the unemployment rate to pass the six percent mark within a few months. The Secretary of the Treasury testified before Congress on October 3 that the economy contracted during the just completed third quarter of 2001 and that it is “common wisdom” that the contraction will continue into the fourth quarter as well. Many experts, including such respected investors as Warren Buffett, are warning that the recession will likely be both deep and prolonged.

(hereinafter “NOI”). The views contained in these comments are the views of the comments’ authors and do not necessarily reflect the views of the directors, officers, or staff of the Foundation.

² PFF Comments, at iii.

³ PFF Comments, at iii.

The data are bad and getting worse. As President Bush said on October 5, “It’s clear as a result of today’s new unemployment claims that the attack of Sept. 11 sent a shock wave throughout our economy, and we need to do something about it.”

In response, policymakers on Capitol Hill and elsewhere are taking unprecedented steps to avert this impending economic crisis. The Federal Reserve Board has lowered its key interest rates to the lowest levels in nearly 30 years. Members of Congress and the White House are meeting to negotiate an economic stimulus package comprised of policy changes that were inconceivable just 30 days ago. And the need for economic leadership is not limited to the President and Congress, but extends to leaders at every level; even the Washington Metropolitan Area Transit Authority is pitching in, by offering free subway fares to attract shoppers to downtown Washington.

As our initial comments make clear,⁴ the FCC has before it an immediate opportunity to contribute to this nationwide effort, by eliminating regulatory barriers that are slowing investment in the telecom and related industries. In considering its important role in this national effort, the Commission should be cognizant that the IT sector continues to lead the current downturn, just as it led the recent economic boom. In just the past few days, technology companies like AMD, Compaq, Gateway and Sun have continued to announce collapsing sales and profits, leading in the case of Sun alone to a layoff of 3,900 workers, nine percent of its workforce.

Our second point is that, in the context of the current economic situation, the significance of Intel’s comments in the instant proceeding should not be underestimated.⁵ Intel is representative of a substantial segment of the high-tech sector in the sense that its

⁴ PFF Comments at 8-10.

⁵ Intel Comments, filed September 24, 2001.

business would certainly be aided by a more robust demand for, and speedier deployment of, broadband services. Intel expresses disappointment at the current broadband penetration rates, take rates, and bandwidth availability.⁶ It also recognizes that broadband providers, with huge requirements for investment in new facilities, face competitive risks, as well as regulatory disincentives.⁷

Like PFF, Intel concludes that current regulation is undermining the deployment goals of Section 706.⁸ So, it urges the Commission to “propose deregulating all new, last mile broadband investment to encourage the fastest possible deployment of the high-speed technology.”⁹

PFF agrees with Intel that the Commission needs to take a more dynamic view in evaluating the broadband marketplace, one that does more than crunch the numbers of subscribers in zipcodes and passby rates.¹⁰ And we agree on the need for prompt deregulation of the last mile of broadband, regardless of the technology used to provide the service.

President Bush and other national leaders have urged Americans to “get back to business” in the wake of the September 11 attacks. But for those in charge of setting the economic policies that are now so urgently needed to avert a major recession, this cannot mean “business as usual.”

⁶ Intel Comments, at 7-11. In this, however, Intel is not alone. See also Comments of Alcatel, at 3, and of MFS, at 2.

⁷ Intel Comments, 11-13.

⁸ Intel Comments, at 13. At the risk of duplicating what PFF said in its initial comments, but in the hope of driving home the point, here is the way Intel explained the investment-stifling impact of the FCC’s current regime: “If regulation gives the telephone companies 100 percent of the risk where investments do not pan out and effectively caps the upside return where they prove successful, they will invest more cautiously. Forcing facilities-unbundling will also discourage new competitors from investing in broadband facilities. Who wants to compete against resellers who are renting facilities at forward-looking incremental cost rates calculated using cost of capital estimates for plain old telephone service.” *Id.*, at 15.

⁹ Intel Comments, at 15.

In light of the above, we urge again that the Commission move immediately to fulfill its Section 706 responsibilities by implementing a uniform deregulatory regime for broadband providers. In our initial comments, we explained that the Commission possesses independent forbearance authority under Section 706 in the context of this proceeding to accomplish such deregulation, including forbearing from enforcing currently-applicable unbundling requirements, as long as it explains the rationale for its action.¹¹

In light of the nature of Section 706's grant to the Commission of independent forbearance authority and its affirmative mandate to act to encourage deployment, and in view of the difficult economic circumstances we now face, we believe the comments already received in the current proceeding provide ample basis for the Commission to move immediately to remove disincentives to new investment, without engaging in further proceedings and incurring the delays they would necessarily entail.¹²

But if the Commission believes that further proceedings are required, we urge it promptly to issue a new NPRM, with tight deadlines and a narrow focus on the specific

¹⁰ In this particular sense, we agree with those parts of the comments of the Alliance for Public Technology which call attention to the evolving nature of the broadband marketplace. APT Comments, at 3-6.

¹¹ See PFF Comments, at 24-33. We also recognized that the Commission could accomplish much of the same deregulation of facilities used to provide broadband if it construed the "necessary and impair" standard in a way that excluded network elements used primarily for broadband services.

¹² After all, Section 706 directs the FCC "to remove barriers to infrastructure investment." 47 U.S.C. § 157 nt.

deregulatory steps needed to spur increased investment and growth in the IT sector of the U.S. economy.

Respectfully submitted,

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